

REMARKS

Re-examination and reconsideration of the subject matter identified in caption, pursuant to and consistent with 37 C.F.R. §1.112, and in light of the remarks which follow, are respectfully requested.

Claims 15-42 remain pending in this application.

Claims 15-42 have been rejected on the ground of obviousness-type double patenting over claims 1-26 of U.S. Patent No. 6,403,708 for the reasons set forth on page 2 of the Office Action. Withdrawal of this rejection is respectfully requested for at least the following reasons.

While not necessarily agreeing that the double patenting rejection is proper, enclosed with the Response is a Terminal Disclaimer to obviate the rejection. The filing of a terminal disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

In view of the above, the rejection based on obviousness-type double patenting has been obviated and should be withdrawn.

Claims 15-42 have been rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 6,403,708 to Moriya et al. for the reasons given on page 3 of the Office

Action. Reconsideration and withdrawal of this rejection are respectfully requested for at least the reasons which follow.

The present application is a continuation of U.S. Application, Serial No. 09/202,950, filed December 23, 1998. Said Serial No. 09/202,950 was filed under the provisions of 35 U.S.C. §371 based upon International Application No. PCT/JP98/01890, filed April 24, 1998. Consequently, the present application has an effective U.S. filing date of April 24, 1998.

The effective date of Moriya et al. '708 for purposes of 35 U.S.C. §102(e) is November 25, 1998 [note M.P.E.P. §1893.03(b)(A)]. This date is subsequent to the effective filing date of the present application. Since Moriya et al. '708 is unavailable as a reference under 35 U.S.C. §102(e), the §103(a) rejection over this patent should be withdrawn and such action is earnestly requested.

Applicants note that Moriya et al. '708 is based on International Application No. PCT/JP97/01790 which was published on December 4, 1997, as WO 97/45463. The present application claims priority under 35 U.S.C. §119 of Japanese Patent Application No. 107866/1997, filed April 24, 1997. Attached to the present Response is a certified English language translation of said Japanese priority application. A review of the translated document shows that claims 15-42 are fully supported by the disclosure thereof. Accordingly, published document WO 97/45463 is unavailable as a reference against the present application.

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is earnestly solicited.

Attorney's Docket No. 033235-008

Application No. 09/881,677

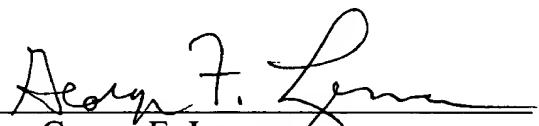
Page 4

If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned at (703) 838-6683 at his earliest convenience.

Respectfully submitted,

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